

MINUTES  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
October 23, 2017 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, staff.

**MEMBERS ABSENT:** None.

Mrs. Rector stated Tina Baxter has resigned from the Board and the Commissioners will be appointing a new member.

**MINUTES:** Upon a motion made by Mike Moesner and seconded by Mike Winge the Minutes of the last regular meeting held September 25, 2017 were approved as circulated.

**VARIANCES:**

BZA-V-17-22

APPLICANT/OWNER: Todd & Frances Renschler

PREMISES AFFECTED: Property located on the E side of Brandalin Dr approximately 817' N of the intersection formed by Scottsdale Drive & Brandalin Dr. Ohio Twp.Lot 24 Brookelyn Ridge.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an inground pool encroaching 10' within a 50' right of entry easement for Gardner Webb Ditch in an "R-1C" One Family Zoning. *Advertised in the Standard October 12, 2017.*

Frances Renschler was present.

The Chairman called for a staff report.

Mrs. Rector stated first she needs to ask Attorney Doll a question. She said Mrs. Renschler went above and beyond in mailing the notices of this meeting since she mailed them by Certified Priority Mail on September 29, 2017 not by certified with return receipt. She said we have the receipt showing the date they were mailed and the addresses of each individual and we also have

print outs from USPS showing all letters have been delivered. She said this cost her \$17 a letter instead of \$7.

Attorney Doll said that is equivalent to certified mail and it will be fine.

Mrs. Rector said so the notice to the adjacent property owners is in order then. She added there is an existing single family home on this lot and the surrounding property to the north is R-1A being Julianne Estates and to the east, west and south is R-1C being more Brookelynn Ridge. She added there is no flood plain on the property and they have an existing driveway on Brandalin Dr. Mrs. Rector sated they have appeared before the Drainage Board and were granted a 10' encroachment into the right of entry and they have also entered into a Hold Harmless Agreement with the Drainage Board for the encroachment. She said when this subdivision was platted in 2001 there was a 75' right of entry for Gardner Webb Ditch along the back of the lot and there was also a 10' PUE located inside the 75' right of entry. She said in 2003 the PUE was vacated and in 2004 the Drainage Board reduced the right of entry to 50 feet from the top of bank. She added when they first came in to the office asking for a permit for the pool they were wanting the pool to be 29 feet from the back of the house but that location had it encroaching 20' into the easement so they have moved the pool and concrete 10 feet closer to the house in order to stay within the encroachment agreement with the Drainage Board. She said the application is in order.

Mrs. Renschler had nothing to add.

Ascertaining there were no questions from the Board and being no remonstrators present, the Chairman called for a motion.

Doris Horn made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the 50' easement consumes most of the back yard and it is almost 2/3 of the property owners back yard and they don't have any control over that.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.
  - e) Subject to the Hold Harmless Agreement

The motion was seconded by Mike Moesner and unanimously carried.

Mrs. Rector said they could pick up their approval and permits on Wednesday.

BZA-V-17-24

APPLICANT/OWNER: Kelly & Karen Foley

PREMISES AFFECTED: Property located on the W side of Hewins Rd approximately 2000' S of the intersection formed by Hewins Rd. and Edwards Rd. Boon twp. Lot 3 in Foley Minor.

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to all a minor subdivision with one proposed lot not meeting the 50' (accessible) minimum frontage on a dedicated and maintained roadway in a "CON" Recreation and Conservancy District. Lot will be accessed by a shared driveway via ingress/egress easement. *Advertised in the Standard October 12, 2017.*

Chip Wood, Morley & Associates and Kelly Foley were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail of notice to the adjacent property owners except for Michael & Theresa Schnell and Waylon & Kelly Walls. She said they have the white pay receipts. She said this is currently a parcel in a minor subdivision and all surrounding property is zoned CON or Agriculture with residences and no flood plain. She said all the lots front on Hewins Road. She stated this property is reclaimed mine property that has several stripper pits on it. She said it was divided as a minor subdivision in 2004 and there was an existing ingress/egress easement that the existing house on Parcel 3 was using and continues to use since a stripper pit ran across most of the front of the lot along the road. She said they came into the office inquiring about dividing parcel three into two lots originally and because of the access question they appeared before the Plan Commission where they were told by the Board they needed to fill in part of the pit in order for the lots to have access and that they could have a shared driveway for the access and that the County Engineer should agree to the amounts for each side. She said they did fill in part of the pit which gives the proposed Lot 2 access; however, the new Lot 3 will have access by a 50' ingress egress easement since the pit cuts off the front of the lot which is not what the Plan Commission said to do. She said the 50' easement is 25' on each side for 75' and then narrows down to 15' on Lot 3 (that is all water) and 25' on Lot 2. She added at no time in any of the emails was it ever mentioned the possibility of access by easement; it was always my understanding that there would be at least 15 feet of land for the parcel. She said the existing house will have its own frontage because they are obtaining acreage from the neighbor to the south in King Whyte 2 Minor subdivision.

Mrs. Rector said the existing house is using 1555 Hewins Road as their address but the parcel was given 1655 Hewins Road. She said when we address the new parcels, the existing house number will then actually fall in line and be 1555 but since they use the existing shared ingress/egress easement their mailbox will be out of order on the road and could cause an issue with 911. She said that is really information for the owners than the Board. She said if the Board does approve this then I suggest a Hold Harmless is required. She said we normally do not approve lots with access by an easement across anyone else's parcel and as she told Mr. Wood with Morley's, it was her understanding that Bobby Howard would say how much ground they would need and then they could go around and each lot have (the driveway) and Bobby said 15 feet would be adequate. She said that was what she thought. She said she did not think it would

be cut off with no access and they would have to drive over on someone else's property to get to theirs. She said they filed this Variance while she was on vacation and she wasn't aware of it until it got to this point. She said she doesn't know if they feel this is what the Plan Commission said and they said if she didn't feel comfortable signing it she could bring it back to them but now they have filed for a Variance with access like this.

Attorney Doll said he feels they have the right to file for a Variance and it is up to this Board to decide whether it is meeting the spirit of the ruling by the Plan Commission or whether this is good enough. He said this Board can make that decision.

Chip Wood said they were trying to fill it in but it was getting so deep ...

Mr. Foley said he put in over 180 triaxle loads in it already.

Mr. Wood said the dirt was going straight down and they weren't gaining anything so they had to do something else. He said they talked to Bobby Howard about it and maybe he misunderstood about what they had but they filled in over fifty feet already. He said they are trying to make the two lots for their sons to build out in front.

Kelly Foley said he has also purchased property from his neighbor so he would actually have the dirt road frontage as well.

Doris Horn asked what year this was planned.

Mrs. Rector said originally it was platted in 2004.

Doris Horn said she thinks she remembers this and they (APC Board) had a hard time with the 25 feet or 15 feet.

Mrs. Rector said that last year is when they went to the Plan Commission and she looked at it.

Mrs. Rector said she certainly doesn't want to keep anyone from dividing their property or anything like that and building a home for their children but they have to consider when they start allowing subdivisions with Variances then they are not meeting the Subdivision Control Ordinance and she doesn't want to get it started and they have this every month with people wanting to divide property not meeting the ordinance.

Chip Wood said the lot has frontage but it is a fine line...

Mrs. Rector said they don't have access – it is the same thing so she just doesn't want it to start being very month we are sitting here trying to go around meeting the subdivision process and the requirements.

Chip Wood said he understands.

The Chairman called for questions from the Board.

Mike Moesner said he thinks the spirit of it is that they have tried to rectify the situation and it is next to impossible as he understands it. He said you can't continue to fill up a lake if it is that deep.

Jeff Willis asked how they access the current lots.

Mr. Foley said right now – his mom and dad owned this property and they had one driveway that everybody accesses all their houses off that driveway. He said that is how he gets to his house. He said now, they will have to come in on that fifty foot that he filled in. He said his one son is going to build there as soon as you get across the lake and the other one will have to build a driveway farther back to his property. He said and then he has bought property on the south side from a neighbor to give his own house dirt access too.

Mrs. Rector asked if this is approved, would each individual need to enter into a Hold Harmless prior to obtaining permits.

Attorney Doll said that is exactly right. He said the County may not be able to get fire trucks or emergency vehicles back there and they want to make sure that if the Board decides to grant a Variance the owners understand they will be expected to say to the County they will not hold them responsible if some of these bigger pieces of equipment that the County operates in emergency settings can't get to them.

Kelly Foley said that is not a problem now.

Terry Dayvolt asked where Mr. Foley's existing house was located.

Discussion ensued over the location of the existing houses and how they were accessed over the existing driveway easement. Discussion ensued over the location of the two new parcels.

Doris Horn said since this is something that Sherri has not had time to review because she was out would this be feasible for them to table this and let her look at it.

Mrs. Rector said she has looked at it a hundred times – she has been looking at it for a year. She said she just didn't realize a Variance had been filed on it.

Terry Dayvolt questioned the driveways to the existing houses.

Discussion ensued again over the existing access and the frontage for the lots.

Kelly Foley said everybody's utilities runs down that easement now too. He said the driveway was done in 1975.

Discussion ensued over the proposed location of the new homes.

Terry Dayvolt said he understands they have already purchased additional ground on the south end of the lake for additional frontage for a driveway.

Chip Wood said they are filing a minor subdivision showing that if this goes through. He said he added property to the south to make sure they could have enough ground as possible around that pit. He said they tried to get the other fifteen feet like Bobby wanted but it just got to where they weren't making any headway.

Terry Dayvolt said so what they are asking for tonight is to go around the lake on the other side of the drive.

Jeff Valiant said if this is approved they would be willing to enter into Hold Harmless Agreements.

Mr. Foley and his two sons said they would.

Ascertaining there were no further questions and being no remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is there is a pre-existing water structure remaining from the prior mining activity in the area.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not

merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to the Minor Subdivision being approved.
  - b) Subject to Hold Harmless Agreement by all parties of the property.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.

The motion was seconded by Mike Moesner.

Mrs. Rector asked if they would amend the motion that the Hold Harmless be obtained by the owner of the lots prior to any Improvement Location Permit being obtained. She said then that way we know they have them before they build their house.

Terry Dayvolt amended his motion and Mike Moesner amended his second. The motion unanimously carried.

Mrs. Rector said the approval will be done on Wednesday and then see where they are on the subdivision plat.

Chip Wood said he has made some changes and was waiting to see what happened tonight before he submitted it. He said he will call her tomorrow.



Mrs. Rector said once that is recorded they will have to do the deeds and get the property in each son's name before they can get permits and once they get the deeds they need to give them to the office so we can do the Hold Harmless and they can sign them and get them recorded and then they can get their permits.

She said just so they know why she was saying what she did about the address and the mailbox, there was a gentleman in the office the other day who had his mailbox in a different location than where his house was and his son almost drowned because the ambulance could not find them. She said the little boy survived because his mom did CPR and so it is very important for your mailbox and address to be where your access is to your house. She said you have to be careful when you start using easements because they can't find you.

### **SPECIAL USE:**

BZA-SU-17-23

APPLICANT: HealthSouth/Deaconess, LLC by Art Wilson, Chief Real Estate Officer

OWNER: Patricia Martino, Trustee

PREMISES AFFECTED: Property located on the S side of Warrick Trail approximately 1800' W of the intersection formed by Libbert Rd. and Warrick Trail. Ohio Twp. Complete legal on file.

NATURE OF CASE: Applicant requests a Special Use, SU 9, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an 80 bed inpatient rehabilitation hospital facility in an "A" Agricultural District (proposed "C-4" General Commercial). *Advertised in the Standard October 12, 2017.*

Lyle Mehringer, 3I Design representing Health South and Don, Fuchs, Attorney, representing Patricia Martino were present. Mr. Fuchs said he would appreciate the record to reflect that Ms. Martino is not here this evening in view of the fact that she resides outside the Chicago area and is recovering from a surgical procedure.

The Chairman called for a staff report.

Mrs. Rector said we have all the return receipts from certified mail. She said this property is currently vacant and the surrounding property to the north and west is zoned Agriculture; to the east is Agriculture and then C-4 being the proposed Meijer store and subdivision. She said all of that property is currently vacant. She said to the south across SR 66 is "R-1" – Country Place and Agriculture. Mrs. Rector said almost half of the property lies within an AE Flood Plain and any structures will require a certified plot plan showing the structure will be 2' above the base flood elevation ten feet around the structure or they will need to obtain a LOMA for the property. She said they front on Warrick Trail and will need to obtain a Commercial Driveway Permit. She added the Commissioners approved the zoning today. She added the property was severed when Warrick Trail was constructed and they have done a parcelization to place the parcels into compliance and they do not plan on dividing the property any further. She explained the plot plan is a **conceptual layout** showing the location of the 80 bed in-patient rehabilitation hospital and parking. She said the actual location and/or size of the hospital may change as well as the

location of the parking lot. She added they did come to a site review and the County Engineer indicated they may need a traffic impact study. She said they also need to submit drainage plans and a SWIP before any construction can begin and they will also need to file a Commercial Driveway and post surety for the construction or actually construct it prior to any permits being issued.

She stated per the Comprehensive Zoning Ordinance a Special Use shall be completely established within one year from the date of approval unless a written request for a longer time period is submitted and made a part of the application and approved by the Board. She said they have submitted a request asking for two additional years putting the completion date to be October 23, 2020. She said they don't believe it will take that long to complete it but you don't know about weather or circumstances. Mrs. Rector reminded the Board they did change the ordinance recently in order for this request to be possible as well as to allow for conceptual layouts on big projects such as this. She said the application is in order.

Attorney Doll asked about parcel 2 to the north.

Attorney Fuchs said that is not being sold and the trust will continue to own it.

Mrs. Rector said the County created the division of the parcel when they built Warrick Trail and Health South graciously did the parcelization to bring the property into compliance.

Mike Moesner asked how many acres are involved.

Attorney Doll said it is 13.68 acres.

Mike Winge asked about the traffic study.

Lyle Mehringer said it is underway now. He said they hired a firm to do the traffic impact study and they are working through design development now and throughout the design phase is when they will finish the drainage plans, the construction entrance and all the other requirements.

Attorney Doll said this is a replacement facility. It will be replacing the operation on Covert Avenue.

Lyle Mehringer said that is correct.

Mrs. Rector said in site review one of the representatives reported that there would be approximately 315 employees with 260 being full time.

Jeff Willis said that seems like a lot.

Mrs. Rector said well they are open 24 hours a day so they will have different shifts.

Mike Moesner said so the existing facility is in Vanderburgh County and we are gaining it.

Mrs. Rector said part of the existing facility is being rented out to different doctors. She said the way they explained it to her about the way it was set up with male and female patients in the existing one they will be able to have more patients in this new facility.

Lyle Mehringer said the existing facility has to share rooms and when you have male/female occupancy you can't double up rooms and these will be private rooms.

Attorney Doll asked if they will also have professional offices in this building.

Lyle Mehringer said not that he is aware of.

Mrs. Rector said nothing was mentioned in site review.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Doris Horn made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location permit being obtained with all structures meeting setback requirements.
4. Subject to any required Building Permit.

5. Subject to a commercial driveway(s) being obtained.
6. Subject to any required drainage plans and SWIPP.
7. Subject to a traffic impact study if required.
8. Subject to facility being completely established by October 23, 2020.

The motion was seconded by Jeff Willis and unanimously carried.

Mrs. Rector said the approvals will be ready on Wednesday.

Don Fuchs asked if an approved copy could be emailed to him.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Being no further business the meeting adjourned at 6:35 p.m.

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Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held October 23, 2017.

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Sherri Rector, Executive Director